

Review of Statewide Uniform Child Support Guideline 1998

EXECUTIVE SUMMARY

Federal law requires that each state establish a uniform guideline to determine child support orders. The guideline must create a rebuttable presumption that the amount of support calculated under the guideline is the correct amount of support. The guideline must be applied in all cases in which child support is ordered. California has adopted a child support guideline in compliance with federal law. California's guideline is found at Family Code sections 4050–4076.

Federal law also requires that each state review its child support guideline every four years to ensure that application of the guideline results in the determination of appropriate child support awards. In California, the Legislature has directed the Judicial Council to conduct this review.

This report is the second review of California's child support guideline prepared by the Judicial Council. The first report was released in December 1993, shortly after the Legislature had adopted a major portion of the guideline now in effect. Although a limited case study was conducted and presented in the first report, the current guideline had not been in effect long enough for the study to indicate anything more than some preliminary results.

In addition to summarizing a comprehensive study of child support orders that examines how the guideline is being applied by the courts, this report discusses the history of the development of the uniform child support guideline in California, analyzes how the guideline works, and provides a summary of case law that interprets various statutory provisions of the guideline. A section is devoted to reviewing the Judicial Council forms that have been adopted to implement the guideline in the courts. Selected provisions of California's guideline are compared to similar provisions that have been implemented in other states. The various analyses of studies on the cost of raising children are examined, and, finally, recent studies concerning child support guidelines are reviewed.

Description of California's Child Support Guideline

The child support guideline is set out in Family Code section 4055. It provides a formula for determining child support based on the combined net income of the parents and the amount of time each parent has responsibility for taking care of the children. The net income of each parent is determined after taxes, medical insurance, mandatory retirement contributions and other job-related expenses are deducted from gross income. Certain other expenses, such as costs for a parent's

other child or children, extraordinary medical expenses, and catastrophic losses, can be considered as hardship deductions from income in appropriate situations. Once the amount of support is determined under the formula, it is multiplied by a percentage based upon the number of children involved. For example, support for two children is determined by multiplying the amount determined by the guideline formula for one child by a factor of 1.6. If the paying parent has a net income of less than \$1,000 per month, the court may, in its discretion, reduce the guideline amount of support under a formula specified by statute.

The amount of support determined under the guideline formula is presumed to be the correct amount of support to be ordered by the court. It is a rebuttable presumption affecting the burden of proof. The presumption may be rebutted only if the court finds by a preponderance of the evidence that the application of the guideline would be unjust and inappropriate in a particular case because one of a list of factors specified in the statute are applicable. See Section 3 of this report for a detailed explanation of the operation of the child support guideline.

Case Study

Section 6 of this report presents the results of a comprehensive study undertaken by the Judicial Council to determine how the California guideline is actually being applied by the courts in individual child support cases. The objective of the study was to determine to what extent courts follow the child support guideline and to identify the number of, and reasons for, court orders that deviate from the guideline.

The study consisted of a sampling of child support orders from support actions filed between July 1, 1995, and June 30, 1996, in 11 California counties. A team of seven attorneys and eight paralegals with experience in family law and child support reviewed and collected data from more than 3,000 court files that contained child support orders. Of the cases reviewed, 2,987 had sufficient information to be included in the case analysis. Cases were selected using a methodology designed to ensure that all child support orders filed in the 11 counties during the period of the study had an equal chance of being included in the study. A complete description of the methodology used in the study is presented in Section 6 and Appendix B to this report.

Results of the Study

The most significant findings from the study include the following:

Most cases follow the child support guideline.

- The results of the study indicate that 90.1 percent of the orders in the cases reviewed followed the child support guideline. In 9.9 percent of the cases, the guideline figure was rebutted. Orders established or modified by the district attorney's office were more likely to follow the guideline than those established or modified in private cases. In district attorney cases 98.2 percent were based on the guideline. In private cases 81.5 percent of the cases conformed to the guideline.

The most common reason for not following the guideline was that the parents agreed not to follow it.

- Of the 297 orders that deviated from the guideline, the majority, 78 percent, were cases in which the rebuttal to the guideline was based on an agreement between the parties. The next largest category, 18.9 percent, comprised cases in which the rebuttal factor was not stated in the court file. In 3 percent, the rebuttal was due to different time-share arrangements for different children subject to the order. Other orders deviating from the guideline were based on rebuttal factors that were found in only one or two cases in the sample.

In cases in which the order was not set at the guideline amount, orders were somewhat more likely to be lower than the guideline amount than higher than the guideline amount.

- In most cases in which the parents agreed to an order that differed from the guideline, the amount that should have been ordered under the guideline was not stated in the court file. However, in the 65 cases in which the parties stipulated to deviate from the guideline where the presumptive guideline amount was stated, 35.4 percent of the deviations were above the guideline amount and 64.6 percent were below the guideline amount.

The income reported for most parents was less than \$2,000 per month.

- Although court files often did not record the parties' gross income, the income that was reported was generally quite low. Parents who were reported to have the children with them more than 50 percent of the time for the purposes of calculating child support tended to have a significantly lower income than those who were reported to have their children with them less than 50 percent of the time.

- For those parents for whom timeshare was calculated as 50 percent or more, 70.5 percent had gross monthly incomes less than \$1,000 per month, and 16.2 percent had gross incomes between \$1,000 and \$2,000 per month. For those parents whose time share was calculated at 50 percent or less, 23.9 percent had gross incomes of less than \$1,000 per month, and 35 percent had gross incomes between \$1,000 and \$2,000 per month

If the payor's income was unknown, courts often based an order on that parent's ability to earn the minimum wage.

- In 1,420 cases in the sample, the income of the payor was unknown. In 60 percent of those cases, the court imputed income to a parent and based its order on earning capacity. Income was most often imputed in default cases. Orders established by the district attorney were much more likely to be based on income imputed to the payor than those established in private cases. Income was imputed to the person receiving child support in only 5.1 percent of the cases in which income was imputed.
- The average amount of income imputed to payors was \$897 per month. The amount most frequently imputed was \$737 per month, which was the approximate amount that a party would make if earning minimum wage during the period of the survey. Minimum wage was imputed in 72.9 percent of all orders in which income was imputed to fathers, and 70.6 percent of all cases in which income was imputed to mothers. The average award based upon this imputed income was \$154 per month for one child and \$247 per month for two children.

The low-income adjustment, which lowers the amount of support due for payors who earn less than \$1,000 per month net income, was granted in approximately 10 percent of the cases examined.

- There were 1,117 payors in the survey whose net income was less than \$1,000 per month, and who were thus eligible to utilize the low-income adjustment in the child support formula. Low-income adjustments were granted in 11 percent of the cases that qualified.

In most of the cases examined, the support order was obtained by default.

- More than 50 percent of the orders studied were obtained by default—that is, the person from whom support was requested did not file any court papers. Stipulations account for 39 percent of the matters. Only 9.1 percent were

resolved through contested hearings. Actions in which the district attorney was involved were much more likely to proceed by default than private family law actions. Nearly 75 percent of district attorney cases proceeded by default. Contested hearings were conducted in only 4.3 percent of district attorney cases, and 21 percent were resolved by stipulation. In private cases, 28.1 percent of the cases proceeded by default, 57.7 percent were resolved by stipulation, and 14.2 percent were the result of a contested hearing.

Most support orders covered only one child.

- In 60 percent of the orders studied, only one child was subject to the order. Two children were subject to the order in 28 percent of the cases; three children were covered in 9 percent of the cases. Four or more children were covered in 3 percent of the cases.

Hardship deductions from income were granted in only 7 percent of the cases. The deductions were mostly for children of another relationship.

- Under the child support guideline, if a parent is experiencing extreme financial hardship based on responsibility for expenses for another child, extraordinary medical expenses, or uninsured catastrophic losses, those costs can be deducted from the parent's income in determining support. The study found that hardship deductions were granted in only 6.8 percent of all cases. In 97 percent of those cases in which hardship deductions were granted, the deduction reflected the costs of children of another relationship. A hardship deduction was granted for extraordinary medical expenses in eight cases and for catastrophic losses in only two cases.

Most parents did not have attorneys representing them in their child support cases.

- The study found that a large group of parents are not represented by lawyers in court proceedings regarding child support. Both parties were unrepresented in 63.4 percent of the cases overall. Only one party was represented in 20.7 percent of the cases. Both parties had attorneys in only 15.9 percent of the cases studied.
- There was a significant difference in the level of attorney representation in district attorney cases as compared to private family law cases. In private family law cases, neither parent was represented in nearly 47 percent of the cases. Only one parent was represented in nearly 24 percent of the cases, and both parents were represented in only 30 percent of the cases.

- In district attorney cases, neither parent was represented by an attorney in 79 percent of the cases. One parent was represented in 18 percent of the cases, and both parents had attorneys in just 2.7 percent of the cases. It should be noted that the district attorney does not represent either parent under Welfare and Institutions Code section 11478.2.

Conclusion

Family Code Section 4054(c) specifies that any recommendations for revisions to the child support guideline made by the Judicial Council ensure: (1) that the guideline result in appropriate support orders; (2) that the number of orders that deviate from the guideline is limited; and (3) that the guideline complies with federal law.

Since California's child support guideline complies with federal law and the study results show that the vast majority of support orders made by the courts are appropriate under the guideline, no recommendations for revisions to the guideline are made.

Although no recommendations are made, a number of issues raised by the study results deserve further investigation. Individuals and organizations are encouraged to review the full report and provide comments to the Judicial Council.